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No. 82-1579

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HAYFIELD NORTHERN RAILROAD COMPANY, INC.,
Appellant,
and
STATE OF MINNESOTA,
Appellant/Intervenor,
v.
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,
Appellee.

On Appeal from the United States Court of Appeals
For the Eighth Circuit

MEMORANDUM FOR THE IOWA DEPARTMENT OF TRANSPORTATION AS AMICUS CURIAE

ROBERT S. STEINER
General Counsel
DENNIS J. DOWNING
Counsel
Iowa Department of Transportation
Transportation Regulation Authority
507 Tenth Street
Des Moines, Iowa 50391
515/281-3631

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Table of Authorities	i
Preliminary Statement	1
Relevant Iowa Statutory Provisions	2
Conclusion	9

TABLE OF AUTHORITIES

Cases:

Simmons v. Interstate Commerce Commission, 697 F.2d 326 (D.C. Cir. 1982) 5

Administrative Decisions:

Finance Docket No. 28990F, Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivision, 363 I.C.C. 132 (1980) 3

Federal Statutory Provisions:

49 U.S.C. § 10101a (Supp. IV 1980) 5

49 U.S.C. § 10905 (Supp. IV 1980) 2

State Statutory Provisions:

IOWA CODE § 307B.2 5

IOWA CODE § 307B.3 6,7

IOWA CODE § 307B.5 5

IOWA CODE § 307B.7 7

IOWA CODE § 471.6 2

IOWA CODE § 471.9 2,3

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PRELIMINARY STATEMENT

This Memorandum is filed by the Iowa Department of Transportation (Iowa DOT) in support of the position asserted by Hayfield Northern Railroad Company, Inc. and the State of Minnesota. Iowa DOT has reviewed Hayfield Northern's and the State of Minnesota's Jurisdictional Statement and wholly adopts the contents contained therein. Iowa DOT concurs with the position that the power to exercise eminent domain is available on an abandoned line of rail. Preemption of a state

statute should not be made absent compelling circumstances. The attributes of sovereignty enjoyed by the various states includes the power of eminent domain. The State of Iowa has enacted statutory provisions which are substantially similar to the relevant Minnesota statutes. Iowa DOT concurs in the position taken by Hayfield Northern and the State of Minnesota in asserting that 49 U.S.C. §10905 (Supp. IV 1980) does not preempt the Minnesota condemnation statute when a Minnesota railroad company attempts to condem the track and right of way of a properly abandoned rail line in order to continue rail service on that line.

RELEVANT IOWA STATUTORY PROVISONS

The Code of Iowa provides that the State of Iowa or a railway corporation may acquire property by condemnation under certain circumstances. IOWA CODE §471.6 (1983) states:

> The state or any railway corporation, may acquire by condemnation property as may be necessary for the location, construction, and convenient use of a railway. The acquisition shall carry the right to use for the construction and repair of the railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land taken.

Additionally, IOWA CODE §471.9 (1983) states:

> The state or a railway corporation may, by condemnation or otherwise, acquire lands for the following additional purposes:
>
> 1. For necessary additional depot grounds or yards.
>
> 2. For constructing a track or tracks to any mine, quarry, gravel pit, manufacturing plant, warehouse, or mercantile establisment.

3. For additional or new right of way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.

4. For the preservation of abandoned railroad right of way for future railroad use.

These grants of statutory authority to the State or any railroad corporation could be subverted should the decision from which this pending appeal is taken is allowed to stand. The decision is extremely over-broad in that there are no time constraints regarding the preemptive aspects of the Interstate Commerce Act. For example, this decision could effectively prohibit a state or railroad corporation from acquiring previously abandoned property by condemnation even though the abandonment took place many years previous. Iowa DOT believes that the proper determination of this issue should be that no State condemnation action could lie during the pendancy of the Interstate Commerce Commission abandonment proceeding; however, once the Interstate Commerce Commission concluded the abandonment, its jurisdiction over that property would end and the sovereignty of the States would take over, thereby allowing condemnation in accordance with the particular State statutes.

The Interstate Commerce Commission has consistently held that continuation of rail service is in the best interest of a national transportation policy. In a Notice of Proposed Rules and Proposed Exemptions, served March 21, 1980, Finance Docket No. 28990F, Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions, 363 I.C.C. 132 (1980), the Commission stated that exemption of States from common carrier status "would be based on findings that continued application of some of our regulations to States that acquire abandoned rail lines and to those who operate them would

not be necessary to carry out the national transportation policy, would be burdensome on the States and the operators, and would service no public purpose. In fact, application of some of our regulations may operate to thwart the *public purpose of continuing rail service to shippers on abandoned lines* through the subsidy program." (Emphasis supplied.) The Commission further stated within the same Notice: "If a line has been lawfully abandoned, acquisition lies outside our jurisdiction as the line is not considered rail property." In the same proceeding, the Commission rendered a decision on July 23, 1980, adopting final rules and exemptions. The Commission stated:

> The purpose of these proposals is to promote continuation of rail service by removing certain regulatory constraints from the States and thus encouraging rail continuation programs. In addition, it will remove regulatory constraints which might discourage new operators from initiating service over marginal lines. Within the last year two major rail systems, the Chicago, Rock Island and Pacific Railroad Company, and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company have terminated either all or a substantial portion of their operations. In response to the threat of losing rail service that the States find vital to their economic well being, several States have developed programs to continue service. These programs include plans by States to purchase rail lines and contract with operators to provide service. Also, new businesses have been organized to provide service over these lines. This proposal is designed to facilitate these efforts.

The Commission went on to state:

> The purpose of this proceeding is to facilitate the acquisition and operation of lines for which service by the current carrier will in all likelihood not be continued. *This purpose clearly fulfills our most fundamental congressional mandate: to ensure the development, coordination, and preservation of a transportation system.* (Emphasis supplied.)

The final rules adopted by the Interstate Commerce Commission were appealed to the United States Court of Appeals for the District of Columbia Circuit. See *Patrick W. Simmons* v. *Interstate Commerce Commission,* 697 F.2d 326 (D.C. Cir., 1982) In that decision the Court stated: "The Commission found that the exemption would assist the states in continuing rail service for this limited class of abandoned lines and would remove obstacles that might prevent state acquisition of abandoned rail lines." Furthermore, the Court held that: "It is abundantly evident that Congress desired to facilitate the development of state rail programs, a policy established initially in the 4-R Act and continued in the Staggers Act." Congress recognized the importance of continued rail service when it adopted a rail transportation policy. 49 U.S.C. §10101a states:

> In regulating the railroad industry, it is the policy of the United States Government -
>
> . . .
>
> (4) To ensure the *development and continuation of a sound rail system* with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense. (Emphasis supplied.)

Congress and the Interstate Commerce Commission has consistently been aware of the importance of continued rail service in the United States. Likewise, the State of Iowa enacted legislation in 1980 in order to preserve continued rail transportation in Iowa. The Iowa Department of Transportation, in conjunction with the Iowa Railway Finance Authority, is a potential acquirer of railway facilities which have been abandoned or approved for abandonment. IOWA CODE §307B.5 creates the Iowa Railway Finance Authority and IOWA CODE §307B.2 contains a declaration of necessity and purpose:

The purpose of this chapter is to benefit the citizens of Iowa by improving their general health, welfare and prosperity and insuring the economic and commercial development of the state and by promoting agricultural and industrial improvement. *Access to adequate railway transportation facilities is essential to the economic welfare of the state. One purpose of this chapter is to preserve or provide for the citizens of Iowa those railway services now in existence or needed in the state which have a viable future but which for a variety of economic and legal reasons may not exist if the state does not provide the financing or other mechanisms referred to in this chapter.* It is the intent of the chapter that any public ownership and control of railway facilities provided for in this chapter be transferred to private ownership as promptly as economically practicable subject to financing requirements. It is further intended that the authority created in this chapter be vested with all powers to enable it to accomplish the purposes of this chapter except the power to operate rolling stock.

It is the further intent of this chapter and of the general assembly that, in order to preserve rail competition and to provide for railway service in this state, the authority work primarily with railroad carriers already providing service in this state based upon their willingness and ability to meet these objectives. (Emphasis supplied.)

Legislative findings are contained within IOWA CODE §307B.3. The relevant findings are as follows:

307B.3 Legislative findings. The general assembly finds and declares as follows:

1. **The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, for the**

preservation and creation of employment, and for the promotion of the economy and of agricultural and industrial improvement, which are public purposes.

. . .

3. There will exist a serious shortage of viable rail lines and railway facilities serving the urban, rural, agricultural and industrial communities of the state.

4. There exists a serious problem in this state regarding the ability of agricultural producers to transport economically farm products to traditional markets because of the abandonment and possible abandonment of railway facilities within the state.

. . .

10. It is necessary to create a railway finance authority to encourage the investment of private capital and stimulate the construction, rehabilitation and repair of railway facilities and to prevent the abandonment of others through the use of public financing, publicly assisted financing and other forms of public assistance.

. . .

The powers of the Iowa Railway Finance Authority are contained within IOWA CODE §307B.7 and in relevant part state as follows:

307B.7 Powers of the authority. The authority shall have all powers necessary for the performance of its purposes and duties, included but not limited to, the power to:

. . .

4. **Exercise the power of emminent domain.**

5. Acquire railway facilities, whether located within Iowa or a contiguous state, directly or through an agent, by purchase, lease, lease-purchase, gift, devise or otherwise.

. . .

18. Own a railway facility under this chapter alone, in partnership, or in any other association with any person if necessary or beneficial to preserve part of a railway system, upon the determination, after consultation with the department, that the railway facility is necessary or beneficial to the railway system, to be relinquished to nonauthority ownership or operation as soon as economically practicable.

. . .

CONCLUSION

The State of Iowa has a vital interest in preserving railway service in the state. Specific legislation was enacted creating the Iowa Railway Finance Authority in order to ensure that essential railway lines be preserved. The powers and duties of the Iowa Railway Finance Authority are in addition to the abovementioned authority of the State and any railway corporation in acquiring by condemnation abandoned railroad right of way for future railroad use. Iowa DOT believes that once the Interstate Commerce Commission has rendered a final determination regarding an abandonment, its jurisdiction terminates and no preemption of state laws should occur after termination of Interstate Commerce Commission jurisdiction. The Iowa Department of Transportation, in support of the position of Hayfield Northern Railroad Company, Inc., and the State of Minnesota respectfully requests that this Court review, and reverse the decision rendered by the Eighth Circuit Court of Appeals.

Respectfully submitted,

Robert S. Steiner
General Counsel

Dennis Downing
Counsel

Attorneys For
Iowa Department of
Transportation
TransportationRegulation
Authority
507 Tenth Street
Des Moines, Iowa 50319
515/281-3631

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